



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MPA - 206763

PRELIMINARY RECITALS

Pursuant to a petition filed on November 1, 2022, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Medicaid Services regarding Medical Assistance (MA), a hearing was held on December 28, 2022, by telephone.

The issue for determination is whether the petitioner currently meets the approval criteria for orthodontia.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: written submission of John Busby, DDS
Division of Medicaid Services
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Jason M. Grace
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a 12-year-old resident of Dane County.
2. On or about October 4, 2022, [REDACTED], Orthodontic Experts, requested prior authorization on petitioner's behalf for Comprehensive Orthodontic Treatment Adolescent (D8080) and Periodic Orthodontic Treatment Visits (D8670), PA No. [REDACTED]. Included was a letter that indicated petitioner has a "class II malocclusion, excessive overjet, moderate maxillary and mandibular crowding, unerupted maxillary and mandibular second molars-possible impaction."
3. DMS denied the request on October 11, 2022.
4. Petitioner timely appealed.
5. Petitioner's Salzmann score is 21. There is no documentation by the dental provider of any unusual or extenuating circumstances present under the Department's policy that show handicapping malocclusion or handicapping dentofacial deformity. Nor was there any documentation from a medical doctor or mental health professional indicating that petitioner's teeth caused a medical or psychological issue.

DISCUSSION

MA covers orthodontia if the recipient obtains a prior authorization. To receive authorization, a service must be medically necessary rather than merely socially desirable or cosmetic. Wis. Admin. Code, § DHS 107.02(3)e. To meet that criterion, the Salzmann Index, which measures the misalignment of teeth (referred to as malocclusion), must be 30 or greater, or there is documentation of unusual circumstances that make the recipient's malocclusion handicapping. *MA Providers Handbook*, Topic 2909. Unusual or extenuating circumstances could be that, despite the low Salzmann score, the malocclusion causes the person to have unusual difficulty eating or speaking or the person has documented medical or psychological problems caused by the abnormal occlusion.

Petitioner's mother testified that the dentist has indicated that if her daughter does not receive the requested orthodontic treatment she could have dental issues in the future, including crowding of teeth, difficulty in eating and speaking, and bleeding gums. The mother did not claim, and the record does not indicate, that those dental issues currently exist, merely the potential for them to occur should the requested orthodontic treatment not be provided.

The evidence in the record, including testimony of the mother, is not sufficient to demonstrate that petitioner currently meets approval criteria for the requested orthodontic treatment. There is no evidence that DMS's determination of a Salzmann score of 21 was incorrect. A score of 30 is needed for approval. There is also no evidence petitioner currently has any physical pain or difficulty in eating or speaking. The record further does not contain any documentation from a medical provider that that petitioner suffers any other medical or psychological problem due to the present condition of her teeth.

While I can understand why petitioner's mother would desire her daughter to have braces, and her dentist recommend it, I do not have the authority to disregard the Department's approval criteria. The petitioner has the burden of proving by the preponderance of the evidence that she currently meets the Department's criteria for approval of the requested orthodontic treatment. That has not occurred here. Therefore, I must uphold the denial decision.

I would note that this Decision does not bar the petitioner's dental provider from submitting a new prior authorization request documenting the extenuating circumstance, if any, that would establish the medical

necessity of the requested orthodontia. If petitioner's dental condition changes or worsens, then a new request for the orthodontic treatment can be submitted at that time.

CONCLUSIONS OF LAW

DMS correctly denied the petitioner's request for orthodontia because she has not proven by a preponderance of the evidence that she meets approval criteria.

THEREFORE, it is

ORDERED

That petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

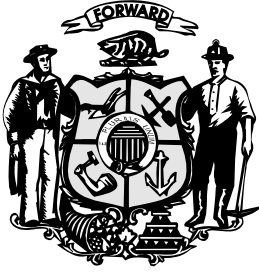
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 3rd day of January, 2023



\s _____
Jason M. Grace
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 3, 2023.

Division of Medicaid Services